vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5146 OF 2005

Maharashtra State Road Transport Corporation ... Petitioner

V/s.

Ankush D. Jagtap ... Respondent

Mr.G.S. Hegde for Petitioner
Mr.N.A. Kulkarni for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 3, 2007**

P.C.:

. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The writ petition challenges the order passed by the Industrial Court in Revision on 29.3.2004. The main grievance of the learned advocate for the petitioner is that the Industrial Court has refused to consider the revision application on the ground that it had been dismissed, although it was restored on 4.10.2002. It appears that revision application (ULP) No.12 of 1995 was filed by the petitioner against the order of the Labour Court in Complaint (ULP) No.254 of 1990. The petitioner remained absent and on 4.10.2002, the Industrial Court dismissed the revision application on the ground of absence of the advocate for the petitioner

and because there was no perversity in the findings of the Labour Court. It appears that an application was moved by the petitioner for restoring the revision application on the same day. The earlier order passed by the Industrial Court was set aside and the revision application was restored to file, to be heard on merits. When the matter appeared before the Industrial Court for hearing, the Industrial Court was of the view that after passing the order dismissing the revision application his predecessor could not have restored the application since he had become *functus officio.* By its order dated 29.9.2004, the Industrial Court has therefore refused to exercise its jurisdiction u/s 44 of the MRTU & PULP Act by concluding that his predecessor had no jurisdiction to restore the revision application once it was dismissed.

3. Assuming that to be so, the Industrial Court in the present order has clearly sat in appeal over the order passed by his predecessor on 4.10.2002, restoring the revision application. This is in clear violation of the powers of the Industrial Court u/s 44 of the MRTU & PULP Act. One Member of the Industrial Court cannot, in any event, sit in appeal over the order passed by another Member.

4. In view of this, the order impugned in the

petition is set aside. The revision application (ULP) No.12 of 1995 is restored to file. The parties to appear before the Tribunal on 15.10.2007. The Industrial Court will hear and dispose of the revision application on merits within three months from today.

5. Rule made absolutely accordingly.